

To: Jose Gutierrez
cc:
From: Judy Bloom
Date: 10/02/95 01:54:51 PM
Subject: Magma Copper

Jose, I have completed my review of the Magma Copper Company's , *Biological Evaluation of the Proposed In-Situ Leaching Site Near Florence, AZ*. The review was conducted as required in 40 CFR 144.4, Considerations under Federal law.

I consulted with several people within the agency including Wendy Melgin (SWPS), James McKinney (end. spp. Watersheds), and Laura Fuji & Carolyn Yale (OFA). Additionally, I consulted with Tina Lee of SCWA, Inc., Nancy Olson of the AZ Game and Fish Department and the Don Henry of US Fish and Wildlife Service.

Endangered Species

It appears from the information provided by the Federal and State agencies that there several endangered or threatened animal species could potentially occur on the property. (Jose, I am assuming that the property is owned by Magma). Through examination of the habitat and a one day visit to the site, the consultants, SCWA, Inc., concluded that these species were unlikely to be present on the site. However, the consultants, SCWA, Inc., did not conduct any specific surveys or conduct any sampling for wildlife. Don Henry of Fish & Wildlife said that we can send the methodology to F&W for their review. I think we should unless someone here can help us out on this to determine if the study was sufficient.

Drainages/ Xeroriparian Habitat

The Department of the Interior, in its letter to Doris dated 6/5/95, noted the special concern for protection of riparian habitat. The Army Corp of Engineers assessed the property and determined that in Drainages A and C (as shown in the Jurisdictional Delineation report prepared by SWCA Consultants) a permit from the Corps is required for any discharge of dredged or fill material within the jurisdictional area. Additionally, the Corps of Engineers emphasizes avoidance of the delineated jurisdictional area.

EPA Decision

Before we make a final decision, I would suggest that we get concurrence on a few things with Fish & Wildlife:

1) The process flow diagram shows open ponds of water that could potentially contain hazardous materials. The open ponds may prove to be an attractant to wildlife, particularly in a desert environment, and should be contained in some manner to deter their use by wildlife. Wildlife that should be deterred include terrestrial and aerial species and particularly the lesser long-nosed bat, the American peregrine falcon, and the cactus ferruginous pygmy-owl.

I would like concurrence on this from F&W and additional back-up (literature, verbal from other project managers).

2) A more thorough investigation should be completed to survey the area for the presence of any listed or candidate species. I would like to check the adequacy of the survey done by SWCA, Inc.

SWCA, Inc. states that it is unlikely that the two Federally listed species and the one State listed species would occur in the project area due to insufficient habitat. I would like their concurrence on this.

3) A program to monitor Federal and State listed and candidate species should be developed and instituted before the project begins and should continue throughout the duration of the project until its completion.

This should perhaps be the case. I, again, would like to see what F&W would think is appropriate. If the ponds are not covered, I would make a stronger case for monitoring.

4) Despite the fragmentation of the xeroriparian habitat, Magma should review the project area to insure that disturbances of the xeroriparian habitat and its hydrogeology are avoided. Within the jurisdictional area any discharge of dredged or fill materials requires a permit from the Corps of Engineers.

5) The AZ Game and Fish Department noted special concerns for two reptiles potentially found in the area (*Gopherus agassizii* and *Sauromalus obesus*). According to the Guidelines for Handling Sonoran Desert Tortoises Encountered on Development Projects, distributed by the Arizona Game and Fish Department, the Manager of a project that is likely to affect desert tortoises should apply for a (AGFD) Department handling permit to facilitate temporary possession of tortoises. Since the project could potentially affect desert tortoises, Magma should contact the State of AZ to apply for a permit. Mechanisms that will be used for the duration of the project to avoid disturbing or harming the Tortoise and Cuckwalla within the project area and along roadways should be described.

6) Prior to removing the saguaro (*Carnegiea gigantea*) or other species, a permit is required from the US Department of Agriculture. Permit requests should be directed to Mr. James McGinnis.

Jose, these are my initial conclusions. Perhaps, I should direct a letter to F&W first, requesting their participation in this process. They are very reluctant to make any decisions and really will only concur or answer questions. They don't want to be portrayed as being the bad guy.

Judy